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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

BOBBY DEWAYNE FELDER,

Defendant and Appellant.

C067705

(Super. Ct. No. 09F06673)

Defendant Bobby Felder entered negotiated pleas of no contest to forcible lewd and lascivious acts with a child under the age of 14 (count one -- Pen. Code, § 288, subd. (b)(1)), lewd and lascivious acts with a child under the age of 14 (count four -- Pen. Code, § 288, subd. (a)), and continuous sexual abuse of a child (count six -- Pen. Code, § 288.5, subd. (b)(1)). The charges involved three victims. In exchange, the trial court was to dismiss the remaining counts and impose a stipulated prison term of 24 years. The trial court accepted the plea agreement.

Defendant's ensuing appeal is subject to the principles of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *People v. Kelly* (2006) 40 Cal.4th 106, 110. In accordance with the latter, we will provide a summary of the offenses and the proceedings in the trial court.

The stipulated factual basis for defendant's plea consisted of a recitation of facts by the prosecutor, the pleadings and the transcript of the preliminary hearing as victim No. 1. As to victim No. 1, defendant forcibly raped a 12-year-old minor in 2004. As to victim No. 2, defendant fondled the back of a sleeping minor in 2005. When she awoke, he asked if he could "lay with her." The victim was 11 or 12 years old at the time. As to victim No. 3, defendant engaged in three or more acts of sexual intercourse in 2002 with a child under the age of 14 to whom he had recurring access because she lived with him.

An August 2009 complaint alleged two counts of forcible lewd and lascivious acts of a child under the age of 14 against victim No. 1. Following a preliminary hearing in January 2010, the magistrate held defendant to answer, deeming the complaint to be the information. A January 2010 complaint charged defendant with two counts of lewd and lascivious acts of a child under the age of 14 regarding victim No. 2, and an April 2010 complaint charged defendant with one count of continuous sexual abuse of a child regarding victim No. 3. Defendant made a voluntary and knowing waiver of his right to a preliminary hearing in both of the latter cases, after which the magistrate designated the complaints as the informations. At a later date,

the trial court granted a motion to consolidate the three cases under the present superior court number.

In January 2011, an amended information added a count of forcible child molestation of victim No. 1. Defendant agreed to the plea we detailed above.

Before accepting his plea, the court confirmed that defendant was waiving his constitutional rights at trial and acknowledged the consequences of the plea, and confirmed that this was a voluntary and informed change of plea after consultation with counsel. Despite defense counsel's request that the court decline to impose any discretionary fines, the trial court orally incorporated by reference the probation report's recommendations of \$5,200 each for a restitution fine and a parole revocation fine (the latter of which the court suspended unless defendant violated parole), \$2,000 restitution to the victims of violent crime program, a habitual offender fine of \$500 (Pen. Code, § 290.3) with \$130 in various penalty assessments, a \$120 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), a booking fee of \$287.78 and a classification fee of \$59.23 (Gov. Code, § 29550.2), and the court facility fee of \$90 (Gov. Code, § 70373). The court awarded conduct credits limited to 15 percent of defendant's actual custody because continuous sexual abuse of a child is a violent felony. (Pen. Code, § 667.5, subd. (c)(16), § 2933.1.)

Defendant filed a notice of appeal in propria persona in connection with which he requested a certificate of probable cause (CPC). He asserted an unspecified denial of a suppression

motion not otherwise appearing in the record, challenged the evidentiary basis for the conviction as to one of the victims, and claimed his plea was the result of ineffective assistance of trial counsel. The trial court denied the request. Defendant filed a second timely notice of appeal in propria persona with another request for a CPC, which challenged his trial attorney's investigation of the evidentiary bases of his convictions. The trial court again denied the request for a CPC.

We appointed appellate counsel for defendant. Counsel has filed an opening brief setting forth the facts of the case and asking us to review the record to determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing the opening brief.

We have received June 2011 communications from defendant, in which he apparently challenges once again the factual bases for his pleas and trial counsel's advice to enter the pleas. His plea of no contest forecloses the former (*People v. DeVaughn* (1977) 18 Cal.3d 889, 895-896) and his lack of a CPC forecloses any basis for asserting that his plea was invalid (*In re Chavez* (2003) 30 Cal.4th 643, 651).

We have otherwise examined the record on appeal, and do not find any arguable error that would result in a disposition more favorable to defendant. However, we note that when the trial court accepted defendant's pleas on counts one, four, and six, the court took under submission the request to dismiss counts two and three, forcible lewd and lascivious acts with a child

under the age of 14, and count five, lewd and lascivious acts with a child under the age of 14. These counts were not dismissed at the time of sentencing.

DISPOSITION

The judgment is affirmed. However, the matter is remanded to the trial court so that it may determine the disposition of counts two, three and five.

MURRAY, J.

We concur:

ROBIE, Acting P. J.

BUTZ, J.